IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION 2458 OF 2004
(For condonation of delay)

ALONG WITH

CRIMINAL APPLICATION NO. 1161 OF 2005
(For Leave to Appeal)

The State of Maharashtra — Appellant-Applicant

vs.

Arun Shirang Shinde & 11 ors. — Respondents

Ms.U.V.Kejriwal, Addl. Public Prosecutor for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 23rd February 2005

P.C.

Heard Ms.U.V.Kejriwal, the learned Additional Public Prosecutor.

2. The present respondents arraigned as accused persons faced trial in Sessions Case No.109/1997 for the offences punishable under Sections 148, 307, 324 read with section 149 IPC in the Court of the IVth Additional Sessions Judge, Pandharpur. Upon conclusion of trial, vide judgment dated 21st August 2002, IVth Additional Sessions Judge, Pandharpur acquitted all the accused persons. Aggrieved by the judgment of acquittal, the State presented criminal appeal on 14th June 2004. As the criminal appeal was barred by time, the application

for condonation of delay has been made. By our order dated 9th February 2005, the criminal appeal has been converted into criminal application for leave to appeal.

3. The application sets out the following reasons as sufficient cause.

> "2. The Applicant states that application for certified copy was given in the month of September, 2002. The certified copies were received in the First week of December, 2002 and the appeal proposal was prepared in the month of December, 2002 and it was kept ready for sending but due to mistake of clerk it has not been reached at the office of District Government Pleader, Solapur and later on all the papers were not traced and they might have been misplaced as there was no any record kept by the concerned clerk about the outward. Hence, the learned A.P.P., Pandharpur could not understand that the appeal proposal was sent or not. In the month of March, 2004 it has came to know that on the judgement and order in counter case No.105/97, the appeal is filed and since then he tried to trace out all the record. But it could not be traced out and hence another application for certified copy was given on 13.4.2004 and the copy was received by him on 6.5.2004 and immediately he prepared appeal proposal. Hence, appeal could not be filed within the limitation as there is reasonable ground to condone the delay as the appeal on the counter case was filed and admitted by the Hon'ble High Court. Hence, in the interest of justice it is necessary to file the appeal in the present case.
>
> 3. The Applicant submits that on 11.5.2004 Assistant Public Prosecutor, Pandharpur, District Solapur forwarded the proposal to the Law and Judiciary Department, Mantralaya, Mumbai requesting them to file an appeal under Section 378(1) of the Criminal Procedure Code in the Hon'ble High Court against order of acquittal. The applicant submits that after receipt of the papers, the proposal was scrutinized by the officers of the Law and

Judiciary Department, Mantralaya, Mumbai and the State of Maharashtra issued Government Resolution bearing No.A-232/04/A on 25.5.2004 and forwarded the same to the office of the Public Prosecutor, High Court, (A.S.), Mumbai. The same was received by the office of the Public Prosecutor, High Court, (A.S.), Mumbai on 27.5.2004. The last date of filing the appeal was 2.11.2002.

4. The Applicant states that present matter was received by the office of the Public Prosecutor, High Court (A.S.), Mumbai after the period of limitation was expired. The applicant states that present matter was assigned to the Additional Public Prosecutor on 2.6.2004 for drafting the appeal. The Additional Public Prosecutor, prepared the appeal and the appeal was ready for filing on 8.6.2004."

4. There is delay of 573 days. The question before us is whether the explanation so put forth constitutes sufficient cause within the meaning of Section 5 of Limitation Act.

5. The impugned judgment came to be passed on 21st August 2002. The date on which the first application for certified copy was made has not been stated anywhere. The only statement is that the application for certified copy was given in the month of September 2002 and that the certified copies were received in the first week of December 2002. The averment made in the application that the appeal proposal was prepared in the month of December 2002 and it was kept ready for sending, but due to mistake of clerk it could not be sent is not supported by the affidavit of the Government

Pleader. The statement made, "In the month of March 2004 it has come to know (SIC) that on the judgement and order in the counter case No.105/97, the appeal is filed and since then he tried to trace out all the record" is difficult to be comprehended. Who came to know in the month of March 2004 and what is not clear. What appears to us is that to cover up the total laxity and negligence on the part of the concerned persons, the ground has been set up that as the earlier certified copy could not be traced out, another application for certified copy was made on 13.04.2004 and that copy was received on 06.05.2004 and then appeal was prepared and presented. We are afraid, delay as long as 573 days cannot be condoned on unspecific and unclear averments. The application does not make out sufficient cause for the delay of 573 days.

6. The application for delay is liable to be rejected and we order accordingly.

7. Despite the fact that criminal application for leave to appeal is liable to be rejected being time barred as the application for delay has been rejected by us, we examined the impugned judgment to satisfy ourselves whether a case for grant of leave was made out if the application was within time.

8. A perusal of the impugned judgment reveals that from amongst the accused persons, accused no.1 sustained the following injuries:

1) Depressed skull frontal bone.

2) CLW frontal region 4 inch x 1 inch bone deep fracture seen.

3) CLW occipital region 1 inch x 1/2 inch x 1/2 inch.

4) Black eye rt.

9. The aforesaid injuries of accused no.1 have not at all be explained by the prosecution.

10. Similarly, we find that accused no.11 sustained depressed skull fracture and that was sufficient in the ordinary course of nature to cause death. There is no explanation by the prosecution with regard to the injuries sustained by accused no.11.

11. The accused no.12 sustained multiple fracture which in the opinion of the doctor was sufficient in the ordinary course of nature to cause death.

12. The accused no.10 also was injured in the incident.

13. The prosecution failed to explain the injuries sustained by accused nos.1,10,11 and 12 and that creates serious doubt about the genesis of the incident. On

merits also, therefore, we find that the acquittal of the accused persons cannot be said to suffer from any legal infirmity.

14. Criminal application no.2458/2004 for condonation of delay and criminal application no.1161/2005 for leave to appeal are, accordingly, rejected.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)